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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 JEFFREY E. WALKER,
8 Plaintiff,
9 v.
10 KROL, et al.,
11 Defendants.

Case No. [15-cv-05819-HSG](#)

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13 **ORDER TO SHOW CAUSE WHY
14 ACTION SHOULD NOT BE DISMISSED
15 WITH PREJUDICE**

16 Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983, alleging that prison
17 officials at San Francisco County Jail violated his constitutional rights. Now pending before the
18 Court is Defendants' motion to dismiss or, in the alternative, motion to compel deposition. Dkt.
19 No. 30. The basis for Defendants' motion to dismiss is Plaintiff's repeated refusals to sit for his
20 deposition. Defendants detail the following efforts to depose Plaintiff:

21 — On November 18, 2015, Defendants attempted to depose Plaintiff, but Plaintiff ended the
22 deposition after twelve minutes, stating that he was "mentally impaired" due to
23 medication. Dkt. No. 30-1 ("Ceballo Decl."), ¶ 11.

24 — On December 7, 2015, defense counsel contacted Plaintiff on the telephone to reschedule
25 his deposition, but Plaintiff refused to discuss setting a new date for his deposition, and
26 abruptly ended the phone call. Ceballo Decl., ¶ 12.

27 — On March 23, 2017, Defendants attempted to depose Plaintiff, but Plaintiff refused to
28 answer any questions related to the present lawsuit, claiming that he had not received
notice of the deposition. Ceballo Decl., ¶ 17.

29 Plaintiff has not disputed Defendants' description of their efforts to schedule his deposition.
30 Because Plaintiff has refused to sit his deposition, Defendants have no evidence concerning the
31 allegations set forth in Plaintiff's complaint. Plaintiff has not filed an opposition to the motion, and
32 the deadline to do so has since passed. Also, Plaintiff has not communicated with the Court since

1 October 31, 2016. It appears from the record that Plaintiff is refusing to prosecute this case.¹ The
2 Court further notes that this action has been pending since December 18, 2015. Dkt. No. 1.

3 The Court orders Plaintiff to show cause why the Court should not grant Defendants'
4 motion to dismiss. **Within twenty-eight (28) days of the date of this order, Plaintiff shall file**
5 **an opposition to Defendants' motion to dismiss.**

6 **IT IS SO ORDERED.**

7 Dated: 6/13/2017

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9 HAYWOOD S. GILLIAM, JR.
10 United States District Judge

27 ¹ Rule 41(b) of the Federal Rules of Civil Procedure provides that a defendant may move to
28 dismiss an action with prejudice if the plaintiff fails to prosecute or to comply with the Federal
 Rules of Civil Procedure or a court order. Fed. R. Civ. P. 41(b).